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28 CFR Ch. I (7–1–14 Edition)

(b) The actual date of approval of such renewal by the United States Trustee.

[78 FR 16152, Mar. 14, 2013]

§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the ap-

proved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

(9) A change in the approved agency's nonprofit status under any applicable law;

(10) Any change in the banks or financial institutions used by the agency; and

(11) [Reserved]

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

[78 FR 16152, Mar. 14, 2013]

§ 58.18 Mandatory duty of approved agencies to obtain prior consent of the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in the amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in

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paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in § 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

[78 FR 16153, Mar. 14, 2013]

§ 58.19 Continuing requirements for becoming and remaining approved agencies.

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this part;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

[78 FR 16153, Mar. 14, 2013]

§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.

To meet the minimum qualifications set forth in § 58.19, and in addition to the other requirements set forth in this part, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

(2) Have a board of directors, the majority of which:

(i) Are not relatives;

(ii) Are not employed by such agency; and

(iii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:

(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 28 U.S.C. 586(a)(1) or (b) for any federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any federal judicial district where the agency is providing or is applying to provide counseling services, a federal court employee in any federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments under a fair share agreement;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.